Client Alert

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FMLA Employer Guide and Workers' Compensation Rate Increase

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Helpful FMLA Resource for Employers

The U.S. Department of Labor recently published a new guide for employers covered by the Family and Medical Leave Act (FMLA) titled *The Employer's Guide to the Family and Medical Leave Act*. The FMLA entitles eligible employees of covered employers to take up to 12 weeks of unpaid, job-protected leave per year for specified family and medical reasons. The *Guide* covers useful topics such as general notice requirements under the FMLA, qualifying reasons for leave, the FMLA certification process, military family leave, an employer's obligations during an employee's leave, and prohibited employer conduct in connection with FMLA leave. If you are an employer covered by the Family and Medical Leave Act, make sure to download your copy of the *Guide* here: www.dol.gov/whd/fmla/employerguide.pdf.

Time to Check Your Workers' Compensation Policies and Practices

On April 28, 2016, the Florida Supreme Court issued a decision in *Castellanos v. Next Door Co.* declaring the mandatory attorney fee schedule in the Florida Workers' Compensation statute, section 440.34, Florida Statutes (2009), unconstitutional. The mandatory attorney fee schedule in section 440.34 capped the award of attorneys' fees given to successful claimants in workers' compensation cases. The Court noted, "[t] he right of a claimant to obtain a reasonable attorney's fee when successful in securing benefits has been considered a critical feature of the workers' compensation law since 1941."

As a result of the Court's ruling, the applicable standard will now be a "reasonable" fee, which in effect will be an attorney's hourly fee.

The decision is seen as a victory for claimants and their attorneys but a crushing defeat for businesses and insurance companies who fear the return of higher workers' compensation costs. On July 1, 2016, in light of recent legal changes including the *Castellanos* decision, the National Council on Compensation Insurance submitted an amended filing to the Office of Insurance Regulation requesting Florida consider a workers' compensation rate increase of 19.6% (the original May 2016 filing requested a 17.1% increase). If approved, the rate increase will take effect October 1, 2016.

"Now is the time for employers of all sizes to really look at their workers' compensation program, practices, and culture," Steve Solomon, CEO of WorkComp Partners, advises. The Court's decision may threaten Florida's improving business climate, as workers' compensation rates will likely drastically increase. "It's not just the rate increase that will be the problem, but the market will firm, making it more difficult for employers to find coverage and/or negotiate terms," says Solomon. Rather than relying exclusively on legislative reforms and the insurance market-place for cost reduction, employers should take proactive steps to reduce costs in the long term. One major way to reduce costs is by managing injury costs. Solomon lists the following ways an employer can reduce injury costs, both before and after an injury occurs:

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Before an injury occurs

- Select and train an injury coordinator
- Establish a return-to-work program
- Hire a person who is fit for the job
- Establish a relationship and get commitments from occupational medical clinics
- Train supervisors on what to do and say when an injury occurs
- Address human resource issues before an injury occurs

After an injury occurs

- Follow a written, repeatable, step-by-step process
- Share the diagnosis and treatment plan with the injured worker and his supervisor and get commitment from both
- Return the injured employee to work as soon as medically possible even if in a modified work capacity
- Maintain positive communication with the employee and the doctor
- If an employee is not recovering according to expectations, address additional underlying causes of the disability

For more information or assistance regarding these issues, please contact Jan Pietruszka at (813) 227-2245; jpietruszka@slk-law.com or Tim Garding at (813) 221-7162; tgarding@slk-law.com.

Thanks to Summer Associate Hayley Salem for her contributions to this article.

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